



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Merrick Construction Company, Inc.

File: B-270661

Date: April 8, 1996

Michael H. Payne, Esq., Starfield & Payne, for the protester.
S. Leo Arnold, Esq., Ashley, Ashley & Arnold, for Valley Construction Company, Inc.
an intervenor.

Lester Edelman, Esq., Department of the Army, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency properly allowed correction of a mistake in bid by the low bidder where the existence of the mistake and the intended bid price were clear from the bidder's original bid preparation papers and the corrected bid remains significantly below the next low bid.

DECISION

Merrick Construction Company, Inc. protests the award of a contract to Valley Construction Company, Inc. under invitation for bids (IFB) No. DACW38-95-B-0085, issued by the U.S. Army Corps of Engineers for flood control equipment and services at various sites along the Mississippi River, asserting that the Corps improperly permitted Valley to correct a mistake in its low bid.

We deny the protest.

The IFB, issued on August 9, 1995, required the submission of prices for 31 line items and a total price. Of the seven bids received at bid opening on September 21, Valley's was low at \$5,652,923; Merrick's was second low at \$6,872,500. The government estimate for the contract work was \$6,234,831.

By letter dated September 25, Valley advised the agency that it had reviewed its bid after opening because it was substantially lower than the government estimate and the other bids received, and had discovered a mistake. Valley stated that its bid of \$669,100 on line item No. 22, "Drainage Pumps," reflected the omission of \$520,000 and requested permission to correct line item No. 22 to the intended \$1,189,100 amount and to make a corresponding adjustment in its total bid price.

A bidder who seeks upward correction of its bid price prior to award must submit clear and convincing evidence that a mistake was made, the manner in which the mistake occurred, and the intended price. Federal Acquisition Regulation (FAR) § 14.407-3(a); Red Samm Constr., Inc., B-250891; B-250891.2, Feb. 25, 1993, 93-1 CPD ¶ 178. Workpapers, including records of computer generated software spreadsheets/worksheets (hard copy printouts, computer disks, tapes or other software media), may constitute part of that clear and convincing evidence if they are in good order and indicate the intended bid price, and there is no contravening evidence. C Constr. Co., Inc., B-253198.2, Sept. 30, 1993, 93-2 CPD ¶ 198. Whether evidence of the intended bid amount meets the clear and convincing evidence is a question of fact, and we will not question an agency's decision in this regard unless it lacks a reasonable basis. Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120; Tri-State Consultants, B-250700, Dec. 22, 1992, 92-2 CPD ¶ 433.

Here, in support of its request, Valley provided the Army with bid workpapers, consisting of its computer generated bid spreadsheet, its handwritten computation for the pumps and reducers under item No. 22 and other documentation, including copies of subcontractor quotes. With the workpapers, Valley submitted an explanation of how it made the mistake and sworn affidavits from those involved in the mistake and the preparation of the bid attesting to the authenticity of the submissions. In response to requests from the Army, Valley subsequently provided the agency with its complete bid file.

Valley explained that its error resulted from its combined use of a computer spreadsheet and handwritten calculations. Specifically, although the bid schedule required a lump-sum bid price for item No. 22, Valley, for ease of calculation, divided items for line item No. 22 into two groups, including in the first group certain required 48 inch "O" pumps (2 each), speed reducers (2 each) and associated installation and, in the second group, a discharge pipe, couplings, expansion joints, formed suction intakes and siphon breaker assembly. On one handwritten worksheet, with the caption "22-Pumps & Pipes" in the upper right-hand corner, Valley listed its breakdown of five components and prices for the pumps and reducers as follows:

Pumps	560,000
Reducers	<u>125,000</u>
	685,000
Tax	<u>55,000</u>
	740,000
Install pipes & pumps	225,000
Elec[trical] for pumps & pipes	<u>75,000</u>
	1,040,000

Beneath the calculation was the circled phrase "Use 520,000 ea."

According to Valley, the notation "520,000 ea." indicated the price for one pump and one reducer. In entering this data into its computer, Valley explained that it inadvertently entered the \$520,000 unit price in the incorrect column of its spreadsheet, as a result of which the unit price was not multiplied by 2 to calculate the intended extended price for the required two pumps. Its spreadsheet shows at line item No. 22 the following information:

<u>Div.</u>	<u>Description</u>	<u>Quantity</u>	<u>U/SUB</u>	<u>SUB-K</u>	<u>TOTAL</u>	<u>ADD</u>	<u>BID</u>
22	Drainage Pumps 48" O Pumps installed with reducers	2 ea.		\$520,000	\$520,000		\$520,000
	48" O discharge pipe- installed	710 lf ¹	\$210	\$149100	\$149,100		\$149,000
	48" O flexible coupling	8 ea.					
	48" O expansion joints	4 ea.					
	formed suction intakes	2 ea.					
	siphon breaker assembly	2 ea.					

The first subitem reflects the five items on Valley's handwritten sheet, as noted above. According to the protester, the \$520,000 should have been entered in the "U/SUB" column to be multiplied by 2, the quantity. The cost for two pumps would then have been calculated and printed in the "SUBK" column, and then carried to the "TOTAL" column. If mark-up² were allocated to the cost of an item, the mark-up figure was entered in the "ADD" column, added to the figure in the "TOTAL" column and the result printed in the "BID" column. Since no mark-up was added to Valley's cost for item No. 22, nothing appeared in the "ADD" column and the "BID" column repeated the "TOTAL" column. Thus, the intended unit price of \$520,000

¹"Lf" refers to linear feet.

²Valley calculated its total mark-up for this project as approximately \$750,000. This \$750,000 appeared as the last item on its computer spreadsheet. In submitting its bid, Valley randomly allocated the \$750,000 mark-up to different items on the bid schedule.

was treated as the extended price and added to the \$149,100 for the remaining subitems of item No. 22, resulting in a total for the item of \$669,100.

Although the agency expressed initial reservations about what appeared to be inconsistencies in Valley's bid, and was unsure the intended bid was apparent from the bid documents,³ it concluded, upon further review of Valley's complete bid file and its written explanation and sworn statements, that Valley had clearly and convincingly established the existence of a mistake and the bid actually intended. The Army therefore allowed an upward adjustment of \$520,000 to line item No. 22, thereby making Valley's corrected bid total \$6,172,923. This corrected amount remains lower than the government estimate and approximately 10 percent lower than Merrick's second-low bid.

Merrick questions the evidentiary value of Valley's worksheets and of the copy of its computer spreadsheet, arguing that Valley does not name the software used or explain its operation. The protester also argues that there is nothing in the record to support Valley's assertion that the "SUBK" column was the multiple of the "Quantity" and "U/SUB" columns and asserts that Valley's handwritten notation beneath its calculations for line item No. 22 cannot be interpreted as reading "Use 520,000 ea," as Valley asserts. According to Merrick, the alleged letters "ea" are indecipherable, and therefore it is impossible to tell whether Valley intended to use the \$1,040,000 listed on the handwritten sheet for the two pumps and reducers or the \$520,000 as the total for the two pumps and reducers.

While Valley did not name the software it used or explain its operation, such information is not necessarily required to establish that the bidder seeking bid

³Specifically, the agency originally believed Valley's bid was unbalanced and had included mark-up in four items, Nos. 1, 4, 29 and 30, greater than the cost of the items. The agency also noted that the apparently overstated mark-up on these four items "coincidentally" equaled the \$520,000 upward adjustment sought by Valley. Additionally, Valley provided inconsistent subcontractor price quotations, one quote from ITT A-C Pumps and one from Patterson Pumps, in support of its pricing. The issue of the unbalanced bid items is addressed below. As to the inconsistent quotes, Valley provided written documentation stating that it did not use the Patterson quote because it received this quote the day of bid opening and although this quote was lower for the pumps, it was unclear if the pump price included the reducers. Also, both quotes included quotes for the diesel engines required under the RFP, and ITT A-C's quote for the engines was lower. Because ITT A-C's total quote was lower, Valley used that quote in preparing its bid price. Indeed, the ITT A-C quote for pumps and reducers equals \$685,000, the exact price listed on Valley's handwritten calculations. The agency verified ITT A-C's price quotation.

correction has provided clear and convincing evidence. See Fishermen's Boat Shop, Inc., B-252560, July 9, 1993, 93-2 CPD ¶ 11. Here, the intended computer operation is readily ascertainable by examining the entries on the spreadsheet and, contrary to Merrick's assertion, these different entries substantiate Valley's explanation of its spreadsheet calculations. Specifically, where a quantity is given for a line item and a price is entered in the "U/SUB" column, that price is consistently multiplied by the given quantity and the resulting sum is printed in the "SUBK" column. The figure in the "SUBK" column is carried to the "TOTAL" column and, as Valley explained, carried to the "BID" column unless a figure appears in the "ADD" column. If a figure is entered in the "ADD" column, it is added to the figure in the "TOTAL" column and the result is printed in the "BID" column. It is clear, therefore, that the quantity item is a multiplier which multiplies the number in the "U/SUB" column.

It is also clear from the documents submitted that Valley's subcontractor, INT A-C, quoted \$685,000 for the pumps and reducers, and that Valley used this equipment quote in its calculations. To this, Valley added associated installation costs, including electrical costs and tax which, when added to the cost of the equipment, equal \$1,040,000. While Merrick suggests that, because Valley's handwritten calculations contain five subitems and its computer spreadsheet contains only two, it is impossible to view the handwritten sheet as supporting the computer spreadsheet, this position is simply misplaced. Valley explained that it had divided the work included in line item No. 22 into two groups. Because it further divided its handwritten calculations for one group into five subitems is of no consequence as the handwritten calculations are specifically captioned as line item No. 22 calculations and clearly constitute the associated costs of installing the pumps.

As to the difficulty in deciphering Valley's handwritten letters "ea" the simple answer is that the letters, "ea" are sloppily written but reasonably discernible, and the entry is entirely plausible in context. Moreover, as noted above, Valley submitted affidavits in which Valley's vice president swore that he performed the written calculations and wrote the circled phrase "Use 520,000 ea." on the handwritten worksheets. There is nothing in the record to suggest that this statement is inaccurate. Based on this explanation and the worksheet entries, it is clear that the \$1,040,000 entry reflects the intended entry for two pumps.⁴

⁴In its initial protest, Merrick suggested that Valley's bid was mathematically unbalanced, thereby providing for a prohibited advance payment. In fact, the record does not reflect that Valley's bid even contains any enhanced prices; indeed as to item No. 1, the largest of four items referenced by the protester, Merrick's price of \$650,000 was more than double Valley's price of \$300,000. To the extent that Merrick is asserting that Valley's bid should have been rejected as unbalanced, the allegation simply lacks any plausible basis.

Finally, the protest alleges that Valley's unadjusted total bid of \$5,686,923 is not supported by the documents since neither Valley's computer spreadsheet nor its bid schedule totals to this figure.

Valley's total bid before upward adjustment was incorrectly calculated and handwritten on its spreadsheet and its schedule as \$5,686,923. This total was not computer generated on its spreadsheet because Valley made a last-minute modification on item No. 26, decreasing this item by \$175,000. Valley then incorrectly subtracted the \$175,000 from the computer-generated total of \$5,827,923, resulting in Valley's incorrect total of \$5,686,923. The mathematical error was corrected by the agency as permitted by FAR § 14.407-2. The correct total for the unadjusted bid on both the spreadsheet and the schedule is, as the agency states, \$5,652,923. In sum, the agency had a reasonable basis to conclude that Valley had provided clear and convincing evidence of the existence of a mistake and of its actually intended bid price.

The protest is denied.

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